

Comments on MM Docket No. 94-130
Response to Initial Regulatory Flexibility Analysis

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Sioux Falls, South Dakota 57104

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January 13, 1995

Office of the Secretary
Federal Communications Commission
Washington, DC 20554

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Dear Secretary:

Enclosed find nine copies of my Response to the Initial Regulatory Flexability Analysis for distribution to the usual destinations.

Sincerely

Theodore C. Miller

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Dear Sirs:

1. I find the Initial Regulatory Flexibility Analysis to be very inadequate. It appears to have been prepared by someone who had no comprehension of the impact that this regulatory proceeding will actually have on broadcasters, including small entities. I will first outline which areas of the Initial Regulatory Flexibility Analysis I find to be deficient. I will then give specific examples relating to those deficiencies.

Problems with the Initial Regulatory Flexibility Analysis.

Section II.

2. The statement "...to clarify the technical responsibilities of broadcast licensees, particularly those operating unattended stations." does not reflect the actual content of the proposed regulations. There are many changes which are not clarifications at all, but implementation of completely new technical and paperwork regulations, with no precedent in current regulations. Examples are provided later.

Section IV.

3. This section addresses only the part of the rule changes which have to do with unattended operation. As listed in Section II, there are also many rule changes "...to clarify the technical responsibilities of broadcast licensees, particularly those operating unattended stations." These changes are mandatory for all licensees, even those who do not choose to take advantage of unattended operation. The statements "However, taking advantage of the flexibility provided by the proposed new rules is entirely optional. Licensees may continue to operate as they currently do if they so desire." have no basis in fact whatsoever. Fully half of the changes proposed are not optional in any way. As proposed, they will be imposed on all licensees, even those who do not choose to "take advantage" of the new rules. Licensees will not have the option to "continue to operate as they currently do if they so desire."

Section V.

4. "V. Recording, Record Keeping and Other Compliance Requirements
None." Again, this is not true, as is demonstrated below.

Section VI.

5. "VII. Any Significant Alternative Minimizing Impact on Small
Entities and Consistent with the Stated Objectives

None." If the rules reflected the objectives stated in Section II, this might be true. However, as demonstrated below, the proposed rules go far beyond the stated objectives, and as such, I would say Yes, there is a significant alternative. Remove all the Rule changes which do not comply strictly with the stated objectives.

Examples of proposed regulations which conflict with statements in the Initial Regulatory Flexibility Analysis

Additional requirements imposed on all stations.

6. Proposed changes to 73.1580(b) impose a new, broad, and undefined record keeping burden on licensees: "The Commission may require the licensee to produce a record of transmitting system measurement, adjustment and preventive maintenance procedures and schedules." This appears to reinstate the old maintenance log requirements (which were deleted some years ago) and a whole lot more. Under current FCC rules, it is up to the licensee's discretion what records are kept, in what form, and what the licensee chooses to do with those records. While the licensee may choose to disclose those records to the FCC in order to defend itself from allegations of misconduct, the FCC has no authority, in the Rules, to demand that a licensee disclose that information.

7. As written, the rule proposed in 73.1580(b) seems to be a prime candidate for a court ruling that it is "overly broad". It could be construed that the FCC could ask for records of when tape heads were cleaned, or any of a myriad of other activities that have never before been subject to FCC scrutiny. The broadness of the rule could easily allow it to be used to harass a licensee by demanding records about everything under the sun, or allow an FCC inspector to go on a "fishing expedition", looking for anything and everything that might reflect badly on a licensee. At the same time there is no way for a licensee to know what records the FCC might request, so there is no way to ever know if he will be able to comply when he is "required to produce a record of ..."

8. A proposed change in 73.1350(c)(2) needs to be more fully discussed. It appears that it may substantially reduce the real-world operating tolerance of all parameters of any remote controlled station, while masquerading as something else. In looking at overpower operation, it appears to have almost cut the tolerance in half. Under current rules, an AM or FM transmitter is assumed to be operating at correct power as long as indicated power is less than 105% of authorized power, whether that power is indicated on a local meter or a remote meter. Under the proposed rule, it would be legal at 105% on the local meter, but only legal to 103% on the

remote meter, because an allowance of 2% would have to be made for the calibration error. The situation is actually more severe than that. For an AM station, power is determined by a base or common point meter. Since the current must be squared to determine the power, the error must be squared as well. The 2% error now becomes slightly more than 4%. That means that instead of having an allowable range of 90-105%, we now have a legal range of only 94-101%. Reducing allowable deviation of a reading by almost half while calling it "making it more relevant" ^{Par.#1} seems like a way to try and slip a new restriction in without letting it see the sunshine of full debate.

Additional requirements imposed on all AM directional stations - forced equipment purchase.

9. Changes to 73.62(b)(2) will require every AM directional station to acquire two way radio capability. This is because of the requirement that operation be modified or discontinued within three minutes of finding that any monitor point exceeds its specified limit. As noted in Paragraph #31 of the NPRM, "the monitoring points for directional AM arrays are often located miles from the transmitter site and scattered in various directions and over different terrain". The very nature of monitoring points means that the person measuring them is not in control of the transmitter. The only possible way to comply with the proposed rule is to use two-way radio communication of some type (one possibility is cellular telephone). In my present employment I do not have, nor do I have access to, such equipment. The effect of this rule, as proposed, will be to force my station to go out and purchase some form of two way radio capability. This will be true, whether or not we choose to take advantage of the proposed changes in duty operator requirements. A more reasonable approach would be to allow time to take a full set of monitoring points and drive back to the station. I propose rewriting 73.62(b)(2) so that it reads:

(2) In the event that any monitoring point exceeds its specified limit, the licensee must either terminate operation within ~~3 minutes~~ 2 hours or reduce power in accordance with the applicable provisions of 73.1350(d) in order to eliminate any possibility of interference or excessive radiation in any direction.

(A similar change would be required in 73.158(c)). This does not seem to be too great of an time allowance, particularly in view of the wording of 73.62(b)(4), which allows 24 hours for completion of these measurements. The two hour limit is proposed because it should be sufficient to allow a set of monitoring points to be read, plus time for the technician to return to the station (or drive to a telephone and issue instructions to the operator) to reduce power or cease operation.

Additional requirements imposed on all AM directional stations - Additional paperwork, reporting, and filing expense.

10. Changes to 73.62(b) impose a new burden on licensees of AM directional stations. Specifically this relates to the removal of the allowance for 10 days of operation with operating parameters outside of tolerance in the presence of inclement weather. Apparently the FCC is not aware of how often operation continues under this provision. Most weather related problems are indeed resolved within 10 days, and operation continues without notification to the FCC.

Since an STA requires a filing fee, it must be sent to Philadelphia and processed there before being forwarded to the FCC offices. By the time the paperwork arrives at the Mass Media Bureau, the weather situation will probably have passed, and the directional antenna will again be operating within licensed parameters. However, that will not stop the STA process. A file number will have to be assigned, someone will have to examine the merits of the request, and a telegram sent, authorizing the STA operation. The station will then have to respond to the FCC, stating that normal operation has resumed (when normal operation has actually been happening since before the STA was issued). The amount of paperwork generated by this, as well as the amount of man-hours consumed both at the licensee and at the FCC, and the amount of money in filing fees that the licensee will be required to bear, all make this seem to be a very poorly thought out change. My past experience with a (critical) directional antenna system would tell me that, by the time all the processing delays have passed, many times that antenna system would spend more time on STA than off of one. In many cases the time from filing an STA application until the time when the FCC would close out that STA would exceed the time interval between occasions when weather changes caused one or more directional antenna readings to be outside of tolerance.

11. If the FCC desires to be able to track how often directional antenna operation occurs outside of authorized tolerance, I propose that the old 10 day weather allowance be retained, with the addition of a notification requirement. Notification to the FCC (in Washington or to the Engineer In Charge of the District) would be required within 24 hours. In cases where the condition was not corrected within 10 days, then the STA would be required. Simple notification would allow the FCC to compile a record of operation outside authorized tolerance, but would not require a response from the FCC, plus a response from the licensee, plus another response from the FCC.

Conclusion.

12. My first choice of action would be to change the proposed rulemaking so that it reflects the objectives stated in the Initial Regulatory Flexibility Analysis Section II. I have proposed some changes in the examples given above. I have filed separate comments addressing the merit of this proceeding. After the Proposed Rules have been finalized, they need to be studied by someone who understands the actual impact of those rules on small entities, and can then rewrite the Regulatory Flexibility Analysis so that it reflects the actual content of what is proposed. As proposed, the rules will have impact far beyond their stated intent.